IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8220 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT CANCER AND RESEARCH INSTITUTE - Petitioner(s)

Versus

A A PAULSON - Respondent(s)

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Appearance :

MR DEVANG NANAVATI for NANAVATI & NANAVATI for Petitioner No(s).: 1.

MRS SANGEETA N PAHWA for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 05/08/2005

ORAL JUDGMENT

1.0 The petitioner Institute has challenged the award dated 01.06.1999 passed by the Labour Court, Ahmedabad,

in Reference (LCIDAT) No. 387 of 1997, whereby the petitioner was directed to reinstate the respondent to his original post with continuity of service and full back wages.

2.0 On 28.12.1992 the respondent herein was issued Office Order by the petitioner Institute appointing him as a Driver on probation for one year from the date of his joining the Institute. Thereafter, on 28.09.1994 the respondent was issued with another Office Order extending his probation period up to 31.03.1995. However, the respondent was relieved from the service of the petitioner on completion of his extended probation period w.e.f 31.03.1995.

2.1 Being aggrieved by the said order dated 31.03.1995, the respondent raised a dispute, which, ultimately, culminated into a reference being Reference (LCIDAT) No. 387 of 1997. The Labour Court, after hearing the parties and after considering the documents placed on record, passed the impugned award with the aforesaid directions. Hence, this petition.

3.0 Mr. Devang Nanavaty learned advocate for the

petitioner has submitted that the respondent was appointed on 28.12.1992 as a Driver on probation for a period of one year from the date of his joining the services of the Institute and in view of the provisions of Clause 2 of the said Office Order dated 28.12.1992, the period of probation was extended.

3.1 Mr. Nanavaty has submitted that the petitioner Institute had not confirmed the services of the respondent looking to his conduct and attitude and since the services of the respondent were not found to be satisfactory, he was relieved from the service.

3.2 Mr. Nanavaty has further submitted that confirmation of an employee in serviceis the prerogative of the Employer and the Court can not substitute its opinion while deciding the matter in a proceedings. He has, therefore, submitted that the Labour Court has committed an error in concluding that the respondent was continuously working beyond the probation period and that there was no breach of the provisions of Section 25(F) of the Industrial Disputes Act, 1947.

4.0 Mr. Nanavaty has relied upon a decision in the case

of Kedar Nath Bahl v. The State of Punjab and ors reported in A.I.R. 1972 S. C. pg.873, wherein it has been held that where a person is appointed as a probationer in any post and the period of probation is specified, it does not follow that at the end of the said period of probation, he obtains confirmation automatically even if no order is passed in that behalf. Unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of specified period, or there is a specific service rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation.

Similar view was adopted in the decision in the case of Popatlal Vasudev Vyas v. Gujarat Water Supply and Sewerage Board and Ors reported in (1989) 1 L.L.J. pg. 161.

4.1 In the case of M. Venugopal v. Divisional Manager, Life Insurance Corporation of India, Machilipatnam reported in (1994) 2 S.C.C. pg. 323, it has been held that if the termination is not deemed to be retrenchment u/s.2(oo) of the Industrial Disputes Act, 1947, then Section 25(F) was not attracted.

Similar view was adopted in the case of Life Insurance Corporation of India and Anr. v. Raghavendra Seshagiri Rao Kulkarni reported in (1997) 8 S.C.C. pg. 461 and in the case of Kalyani Sharp India Ltd. v. Labour Court No.1, Gwalior and Anr reported in (2002) 9 S.C.C. pg. 655.

4.2 In the case of Oswal Pressure Die Casting Industry, Faridabad v. Presiding Office and Anr reported in (1998) 3 S.C.C. pg.225, it has been held that the Court could not sit in appeal over the employer's assessment of the employee's performance and that the Court erred in holding that the employer ought to have produced some reports or evidence to show that the performance of the employee was below the expected norms.

Similar view was adopted in the case of Krishnadevaraya Education Trust and anr v. L. A. Balakrishna reported in 2001 A.I.R. SCW pg. 263 and in the case of Mathew Thomas v. Kerala State Civil Supply Corporation Limited and ors reported in (2003) 3 S.C.C. pg. 263.

4.3 Mr. Nanavaty has next relied upon an unreported decision of this Court in Special Civil Application No. 8221 of 1991 decided on 16.08.2001, wherein the principle laid down in the aforesaid decisions has been followed by this Court.

4.4 Mr. Nanavaty has next relied upon a recent decision in the case of State of Punjab and ors v. Sukhwinder Singh reported in 2005 A.I.R. SCW pg. 3477, wherein it has been held that the termination of service of a probationer on the ground of absence from duty without any formal departmental inquiry or any preliminary fact-finding inquiry cannot be said to be illegal. Mr. Nanavaty has, therefore, submitted that the Labour Court has committed serious error of law in passing the impugned award and the same is required to be quashed and set aside.

5.0 Mrs. Sangita Pahwa learned advocate for the respondent has contended that the Labour Court has rightly granted reinstatement to the respondent since he was not guilty of any misconduct during the said period of two years, meaning thereby that once the period of probation and the extension thereto was over, the

petitioner Employer cannot relieve him from the service. She has, therefore, submitted that the Labour Court was completely justified in granting reinstatement with full back wages.

5.1 Mrs. Pahwa has tried to distinguish the decision relied upon by Mr. Nanavaty in the aforesaid Special Civil Application by stating that in that case there was no material on record to show that the period of probation was extended for genuine reasons, whereas in the present case, there is sufficient material to show that the probation period of the respondent was extended with a malafide intention.

5.2 Mrs. Pahwa has further contended that assuming even if the respondent was guilty of some misconduct, the petitioner Institute ought to have given him some opportunity to improve his conduct. She has submitted that before relieving the respondent from service, the petitioner Institute should have given him some opportunity to improve him conduct. She has, therefore, submitted that the Labour Court has rightly granted the respondent reinstatement with continuity of service.

6.0 I have heard learned counsel for the parties and perused the documents placed on record. It is not in dispute that the respondent workman was issued with Office Order dated 28.12.1992 appointing him as a Driver on probation initially for a period of one year. In the said order it was further stated that the respondent shall be given an opportunity to improve his work and conduct by extending the probation period for another one year. However, there is no document / order on record to show that the respondent was confirmed in service. The probation period of the respondent was extended from time to time, but, there is no order on record to show that the probation period was closed or that his services were confirmed. In the absence of any such order / document on record, it is difficult for this Court to believe that the services of the respondent were confirmed.

6.1 In my opinion, once it is established that the probation of the respondent was not over, the respondent cannot be granted reinstatement in service. In view of the law laid down by the Apex Court in the aforesaid decisions, it is clear that for relieving a Probationer from the service, no inquiry is necessary. Hence, the Labour Court has committed an error in granting

reinstatement to the respondent.

7.0 In above view of the matter, this petition is allowed. The impugned award dated 01.06.1999 passed by the Labour Court, Ahmedabad, in Reference (LCIDAT) No. 387 of 1997 is quashed and set aside. However, it is clarified that the respondent shall not be required to refund any amount which might have been paid to him under the earlier interim orders of this Court. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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